



Sen. Susan Garrett

Filed: 5/26/2010

09600HB1597sam004

LRB096 05153 RLJ 41596 a

1 AMENDMENT TO HOUSE BILL 1597

2 AMENDMENT NO. _____. Amend House Bill 1597 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Regional Transportation Authority Act is
5 amended by adding Section 3B.17 as follows:

6 (70 ILCS 3615/3B.17 new)

7 Sec. 3B.17. Commuter Rail Inspector General.

8 (a) The Governor shall, with the advice and consent of the
9 Senate by three-fifths of the elected members concurring by
10 record vote, appoint a Commuter Rail Inspector General for the
11 purpose of detection, deterrence, and prevention of fraud,
12 corruption, and mismanagement in the Commuter Rail Division.
13 The Commuter Rail Inspector General shall serve a 5-year term.
14 If, during a recess of the Senate, there is a vacancy in the
15 Office of the Commuter Rail Inspector General, the Governor
16 shall make a temporary appointment until the next meeting of

1 the Senate when the Governor shall make a nomination to fill
2 that office. No person rejected for the Office of the Commuter
3 Rail Inspector General shall, except by the Senate's request,
4 be nominated again for that office at the same session of the
5 Senate or be appointed to that office during a recess of that
6 Senate. The Governor may not appoint a relative, as defined by
7 item (6) of Section 10-15 of the State Officials and Employees
8 Ethics Act, as the Commuter Rail Inspector General. The
9 Commuter Rail Inspector General may be removed only for cause
10 and may be removed only by the Governor.

11 (b) The Commuter Rail Inspector General shall have the
12 following qualifications:

13 (1) has not been convicted of any felony under the laws
14 of this State, another state, or the United States;

15 (2) has earned a baccalaureate degree from an
16 institution of higher education; and

17 (3) has 5 or more years of cumulative service (i) with
18 a federal, state, or local law enforcement agency, at least
19 2 years of which have been in a progressive investigatory
20 capacity; (ii) as a federal, state, or local prosecutor;
21 (iii) as a federal or state judge with a criminal docket;
22 (iv) as a senior manager or executive of a federal, state,
23 or local agency; or (v) representing any combination of (i)
24 through (iv).

25 (c) The term of the initial Commuter Rail Inspector General
26 shall commence upon qualification and shall run through June

1 30, 2015. The initial appointment shall be made within 60 days
2 after the effective date of this amendatory Act of the 96th
3 General Assembly. After the initial term, each Commuter Rail
4 Inspector General shall serve for 5-year terms commencing on
5 July 1 of the year of appointment and running through June 30
6 of the fifth following year. A Commuter Rail Inspector General
7 may be reappointed to one or more subsequent terms. A vacancy
8 occurring other than at the end of a term shall be filled by
9 the Governor only for the balance of the term of the Commuter
10 Rail Inspector General whose office is vacant. Terms shall run
11 regardless of whether the position is filled.

12 (d) The Commuter Rail Inspector General shall have
13 jurisdiction over the Commuter Rail Division and all officers
14 and employees of, and vendors, subcontractors, and others doing
15 business with the Commuter Rail Division. The jurisdiction of
16 the Commuter Rail Inspector General is to investigate
17 allegations of fraud, waste, abuse, mismanagement, misconduct,
18 nonfeasance, misfeasance, or malfeasance. Investigations may
19 be based on complaints from any source, including anonymous
20 sources, and may be self-initiated, without a complaint. An
21 investigation may not be initiated more than 5 years after the
22 most recent act of the alleged violation or of a series of
23 alleged violations except where there is reasonable cause to
24 believe that fraudulent concealment has occurred. To
25 constitute fraudulent concealment sufficient to toll this
26 limitations period, there must be an affirmative act or

1 representation calculated to prevent discovery of the fact that
2 a violation has occurred. The authority to investigate alleged
3 violations of the State Officials and Employees Ethics Act by
4 officers, employees, vendors, subcontractors, and others doing
5 business with the Commuter Rail Division shall remain with the
6 Office of the Governor's Executive Inspector General. The
7 Commuter Rail Inspector General shall refer allegations of
8 misconduct under the State Officials and Employees Ethics Act
9 to the Office of the Governor's Executive Inspector General for
10 investigation. Upon completion of its investigation into such
11 allegations, the Office of the Governor's Executive Inspector
12 General shall report the results to the Commuter Rail Inspector
13 General, and the results of the investigation shall remain
14 subject to any applicable confidentiality provisions in the
15 State Officials and Employees Ethics Act. Where an
16 investigation into a target or targets is split between
17 allegations of misconduct under the State Officials and
18 Employees Ethics Act, investigated by the Office of the
19 Governor's Executive Inspector General, and allegations that
20 are not of misconduct under the State Officials and Employees
21 Ethics Act, investigated by the Commuter Rail Inspector
22 General, the Commuter Rail Inspector General shall take
23 reasonable steps, including continued consultation with the
24 Office of the Governor's Executive Inspector General, to ensure
25 that its investigation will not interfere with or disrupt any
26 investigation by the Office of the Governor's Executive

1 Inspector General or law enforcement authorities. In instances
2 in which the Commuter Rail Inspector General continues to
3 investigate other allegations associated with allegations that
4 have been referred to the Office of the Governor's Executive
5 Inspector General pursuant to this subsection, the Commuter
6 Rail Inspector General shall report the results of its
7 investigation to the Office of the Governor's Executive
8 Inspector General.

9 (e) (1) If the Commuter Rail Inspector General, upon the
10 conclusion of an investigation, determines that reasonable
11 cause exists to believe that fraud, waste, abuse,
12 mismanagement, misconduct, nonfeasance, misfeasance, or
13 malfeasance has occurred, then the Commuter Rail Inspector
14 General shall issue a summary report of the investigation. The
15 report shall be delivered to the appropriate authority pursuant
16 to paragraph (3) of subsection (f) of this Section, which shall
17 have 20 days to respond to the report.

18 (2) The summary report of the investigation shall
19 include the following:

20 (A) A description of any allegations or other
21 information received by the Commuter Rail Inspector
22 General pertinent to the investigation.

23 (B) A description of any alleged misconduct
24 discovered in the course of the investigation.

25 (C) Recommendations for any corrective or
26 disciplinary action to be taken in response to any

1 alleged misconduct described in the report, including
2 but not limited to discharge.

3 (D) Other information the Commuter Rail Inspector
4 General deems relevant to the investigation or
5 resulting recommendations.

6 (3) Within 60 days after issuance of a final summary
7 report that resulted in a suspension of at least 3 days or
8 termination of employment, the Commuter Rail Inspector
9 General shall make the report available to the public by
10 presenting the report to the Commuter Rail Board and by
11 posting to the Commuter Rail Board's public website. The
12 Commuter Rail Inspector General shall redact information
13 in the summary report that may reveal the identity of
14 witnesses, complainants, or informants or if the Commuter
15 Rail Inspector General determines it is appropriate to
16 protect the identity of a person before the report is made
17 public. The Commuter Rail Inspector General may also redact
18 any information that he or she believes should not be made
19 public, taking into consideration the factors set forth in
20 this subsection and paragraph (1) of subsection (k) of this
21 Section and other factors deemed relevant by the Commuter
22 Rail Inspector General to protect the Commuter Rail
23 Division and any investigations by the Commuter Rail
24 Inspector General, other inspector general offices, or law
25 enforcement agencies. Prior to publication, the Commuter
26 Rail Inspector General shall permit the respondents and the

1 appropriate authority pursuant to paragraph (3) of
2 subsection (f) of this Section to review the report and the
3 documents to be made public and offer suggestions for
4 redaction or provide a response that shall be made public
5 with the summary report, provided, however, that the
6 Commuter Rail Inspector General shall have the sole and
7 final authority to decide what redactions should be made.
8 The Commuter Rail Inspector General may make available to
9 the public any other summary report and any such responses
10 or a redacted version of the report and responses.

11 (4) When the Commuter Rail Inspector General concludes
12 that there is insufficient evidence that a violation has
13 occurred, the Commuter Rail Inspector General shall close
14 the investigation. The Commuter Rail Inspector General
15 shall provide the appropriate authority pursuant to
16 paragraph (3) of subsection (f) of this Section with a
17 written statement of the Commuter Rail Inspector General's
18 decision to close the investigation. At the request of the
19 subject of the investigation, the Commuter Rail Inspector
20 General shall provide a written statement to the subject of
21 the investigation of the Commuter Rail Inspector General's
22 decision to close the investigation. Closure by the
23 Commuter Rail Inspector General does not bar the Commuter
24 Rail Inspector General from resuming the investigation if
25 circumstances warrant.

26 (f) The Commuter Rail Inspector General shall:

1 (1) Have access to all information and personnel
2 necessary to perform the duties of the office.

3 (2) Have the power to subpoena witnesses and compel the
4 production of books and papers pertinent to an
5 investigation authorized by this Section. A subpoena may be
6 issued under this subparagraph (2) only by the Commuter
7 Rail Inspector General and not by members of the Commuter
8 Rail Inspector General's staff. Any person subpoenaed by
9 the Commuter Rail Inspector General has the same rights,
10 under Illinois law, as a person subpoenaed by a grand jury.
11 The power to subpoena or to compel the production of books
12 and papers, however, shall not extend to the person or
13 documents of a labor organization or its representatives
14 insofar as the person or documents of a labor organization
15 relate to the function of representing an employee subject
16 to investigation under this Section. Subject to a person's
17 privilege against self-incrimination, any person who fails
18 to appear in response to a subpoena, answer any question,
19 or produce any books or papers pertinent to an
20 investigation under this Section, except as otherwise
21 provided in this Section, or who knowingly gives false
22 testimony in relation to an investigation under this
23 Section is guilty of a Class A misdemeanor.

24 (3) Submit reports as required by this Section and
25 applicable administrative rules. Final reports and
26 recommendations shall be submitted to the Commuter Rail

1 Board's Executive Director and the Board of Directors of
2 the Commuter Rail Board for investigations not involving
3 the Commuter Rail Board. Final reports and recommendations
4 shall be submitted to the Chair of the Commuter Rail Board
5 and to the Governor for investigations of any Board member
6 other than the Chair of the Commuter Rail Board. Final
7 reports and recommendations for investigations of the
8 Chair of the Commuter Rail Board shall be submitted to the
9 Governor.

10 (4) Participate in or conduct, when appropriate,
11 multi-jurisdictional investigations provided the
12 investigation involves the Commuter Rail Division in some
13 way, including, but not limited to, joint investigations
14 with the Office of the Governor's Executive Inspector
15 General, or with State, local, or federal law enforcement
16 authorities.

17 (5) Serve as the Commuter Rail Division's primary
18 liaison with law enforcement, investigatory, and
19 prosecutorial agencies and, in that capacity, the Commuter
20 Rail Inspector General may request any information or
21 assistance that may be necessary for carrying out the
22 duties and responsibilities provided by this Section from
23 any local, state, or federal governmental agency or unit
24 thereof.

25 (6) Review hiring and employment files of the Commuter
26 Rail Division to ensure compliance with *Rutan v. Republican*

1 Party of Illinois, 497 U.S. 62 (1990), and with all
2 applicable employment laws.

3 (7) Establish a policy that ensures the appropriate
4 handling and correct recording of all investigations
5 conducted by the Office, and ensures that the policy is
6 accessible via the Internet in order that those seeking to
7 report suspected wrongdoing are familiar with the process
8 and that the subjects of those allegations are treated
9 fairly.

10 (8) Receive and investigate complaints or information
11 from an employee of the Commuter Rail Division concerning
12 the possible existence of an activity constituting a
13 violation of law, rules or regulations, mismanagement,
14 abuse of authority, or substantial and specific danger to
15 the public health and safety. Any employee of the Commuter
16 Rail Division who knowingly files a false complaint or
17 files a complaint with reckless disregard for the truth or
18 falsity of the facts underlying the complaint may be
19 subject to discipline.

20 (9) Review, coordinate, and recommend methods and
21 procedures to increase the integrity of the Commuter Rail
22 Division.

23 (g) Within 6 months after appointment, the initial Commuter
24 Rail Inspector General shall propose rules, in accordance with
25 the provisions of the Illinois Administrative Procedure Act,
26 establishing minimum requirements for initiating, conducting,

1 and completing investigations. The rules must establish
2 criteria for determining, based upon the nature of the
3 allegation, the appropriate method of investigation, which may
4 include, but is not limited to, site visits, telephone
5 contacts, personal interviews, or requests for written
6 responses. The rules must establish the process, contents, and
7 timing for final reports and recommendations by the Commuter
8 Rail Inspector General and for a response and any remedial or
9 disciplinary, or both, action by an individual or individuals
10 receiving the final reports and recommendations. The rules must
11 also clarify how the Office of the Commuter Rail Inspector
12 General shall interact with other local, state, and federal law
13 enforcement authorities and investigations. Such rules shall
14 provide that investigations and inquiries by the Office of the
15 Commuter Rail Inspector General must be conducted in compliance
16 with the provisions of any collective bargaining agreement that
17 applies to the affected employees of the Commuter Rail Board
18 and that any recommendation for discipline or other action
19 against any employee by the Office of the Commuter Rail
20 Inspector General must comply with the provisions of any
21 applicable collective bargaining agreement.

22 (h) The Office of the Commuter Rail Inspector General shall
23 be an independent office of the Commuter Rail Division. Within
24 its annual budget, the Commuter Rail Board shall provide a
25 clearly delineated budget for the Office of the Commuter Rail
26 Inspector General. The budget of the Office of the Commuter

1 Rail Inspector General shall be adequate to support an
2 independent and effective office. Except with the consent of
3 the Commuter Rail Inspector General, the Commuter Rail Board
4 shall not reduce the budget of the Office of the Commuter Rail
5 Inspector General by more than 10% (i) within any fiscal year
6 or (ii) over the 5-year term of each Commuter Rail Inspector
7 General. To the extent allowed by law and the Commuter Rail
8 Board's policies, the Commuter Rail Inspector General shall
9 have sole responsibility for organizing the Office of the
10 Commuter Rail Inspector General within the budget established
11 by the Commuter Rail Board, including the recruitment,
12 supervision, and discipline of the employees of that office.
13 The Commuter Rail Inspector General shall report directly to
14 the Board of Directors of the Commuter Rail Board with respect
15 to the prompt and efficient operation of the Office of the
16 Commuter Rail Inspector General.

17 (i) (1) No Commuter Rail Inspector General or employee of
18 the Office of the Commuter Rail Inspector General may, during
19 his or her term of appointment or employment:

20 (A) become a candidate for any elective office;

21 (B) hold any other elected or appointed public
22 office except for appointments on governmental
23 advisory boards or study commissions or as otherwise
24 expressly authorized by law;

25 (C) be actively involved in the affairs of any
26 political party or political organization; or

1 (D) advocate for the appointment of another person
2 to an appointed public office or elected office or
3 position or actively participate in any campaign for
4 any elective office.

5 As used in this paragraph (1), "appointed public
6 office" means a position authorized by law that is filled
7 by an appointing authority as provided by law and does not
8 include employment by hiring in the ordinary course of
9 business.

10 (2) No Commuter Rail Inspector General or employee of
11 the Office of the Commuter Rail Inspector General may, for
12 one year after the termination of his or her appointment or
13 employment:

14 (A) become a candidate for any elective office;

15 (B) hold any elected public office; or

16 (C) hold any appointed State, county, or local
17 judicial office.

18 (3) The requirements of subparagraph (C) of paragraph
19 (2) of this subsection may be waived by the Executive
20 Ethics Commission.

21 (j) All Board members, officers, and employees of the
22 Commuter Rail Division have a duty to cooperate with the
23 Commuter Rail Inspector General and employees of the Office of
24 the Commuter Rail Inspector General in any investigation
25 undertaken pursuant to this Section. Failure to cooperate
26 includes, but is not limited to, intentional omissions and

1 knowing false statements. Failure to cooperate with an
2 investigation pursuant to this Section is grounds for
3 disciplinary action, including termination of employment.
4 Nothing in this Section limits or alters a person's existing
5 rights or protections under State or federal law.

6 (k)(1) The identity of any individual providing
7 information or reporting any possible or alleged
8 misconduct to the Commuter Rail Inspector General shall be
9 kept confidential and may not be disclosed without the
10 consent of that individual, unless the individual consents
11 to disclosure of his or her name or disclosure of the
12 individual's identity is otherwise required by law. The
13 confidentiality granted by this subsection does not
14 preclude the disclosure of the identity of a person in any
15 capacity other than as the source of an allegation.

16 (2) Subject to the provisions of subsection (e) of this
17 Section, the Commuter Rail Inspector General, and
18 employees and agents of the Office of the Commuter Rail
19 Inspector General, shall keep confidential and shall not
20 disclose information exempted from disclosure under the
21 Freedom of Information Act or by this Act.

22 (l) If the Commuter Rail Inspector General determines that
23 any alleged misconduct involves any person not subject to the
24 jurisdiction of the Commuter Rail Inspector General, the
25 Commuter Rail Inspector General shall refer the reported
26 allegations to the appropriate Inspector General, appropriate

1 ethics commission, or other appropriate body. If the Commuter
2 Rail Inspector General determines that any alleged misconduct
3 may give rise to criminal penalties, the Commuter Rail
4 Inspector General may refer the allegations regarding that
5 misconduct to the appropriate law enforcement authority. If a
6 Commuter Rail Inspector General determines that any alleged
7 misconduct resulted in the loss of public funds in an amount of
8 \$5,000 or greater, the Commuter Rail Inspector General shall
9 refer the allegations regarding that misconduct to the Attorney
10 General and any other appropriate law enforcement authority.

11 (m) The Commuter Rail Inspector General shall provide to
12 the Governor, the Commuter Rail Board, and the General Assembly
13 a summary of reports and investigations made under this Section
14 no later than March 31 and September 30 of each year. The
15 summaries shall detail the final disposition of the Inspector
16 General's recommendations. The summaries shall not contain any
17 confidential or identifying information concerning the
18 subjects of the reports and investigations. The summaries shall
19 also include detailed, recommended administrative actions and
20 matters for consideration by the Governor, the Commuter Rail
21 Board, and the General Assembly.

22 (n) Any employee of the Commuter Rail Division subject to
23 investigation or inquiry by the Commuter Rail Inspector General
24 or any agent or representative of the Commuter Rail Inspector
25 General concerning misconduct that is criminal in nature shall
26 have the right to be notified of the right to remain silent

1 during the investigation or inquiry and the right to be
2 represented in the investigation or inquiry by an attorney or a
3 representative of a labor organization that is the exclusive
4 collective bargaining representative of employees of the
5 Commuter Rail Division. Any investigation or inquiry by the
6 Commuter Rail Inspector General or any agent or representative
7 of the Commuter Rail Inspector General must be conducted in
8 accordance with the rights of the employees as set forth in
9 State and federal law and applicable judicial decisions. Any
10 recommendations for discipline or any action taken against any
11 employee by the Commuter Rail Inspector General or any
12 representative or agent of the Commuter Rail Inspector General
13 must comply with the provisions of the collective bargaining
14 agreement that applies to the employee.

15 (o) Nothing in this Section shall diminish the rights,
16 privileges, or remedies of a State employee under any other
17 federal or State law, rule, or regulation or under any
18 collective bargaining agreement."